

DENVER PUBLIC SCHOOLS
PROCEDURAL SAFEGUARDS FOR STUDENTS/PARENTS

Under Provisions of the Individuals with Disabilities Education Improvement Act
(February 2009)

INTRODUCTION

Described in this pamphlet are student and parent educational rights required under federal and state special education rules and regulations. It is important that you understand your rights as a parent, and your child's rights as they relate to special education. *(The italicized language immediately following each topical heading in this pamphlet provides a concise summary of that particular section.)*

School staff is available to assist you in understanding these rights and if needed, the school will provide an interpreter or translator.

FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

You have a right to participate in meetings with respect to the:

- identification,
- evaluation,
- eligibility determination,
- Individualized Education Program (IEP) plan,
- placement, and
- the provision of a free appropriate public education (FAPE) for your child.

An eligible child with a disability has a right to receive a FAPE that is outlined in an IEP. The IEP addresses your child's unique needs.

Termination of a FAPE

Your child's right to FAPE ends at the end of the semester in which she or he turns 21 or when the student graduates with a regular high school diploma or GED.

Your child's right to FAPE ends if the IEP team, including the parents, determines that the student is no longer a student with disabilities eligible for special education services.

Your child's right to FAPE ends if you choose to withdraw your consent for the provision of special education and related services.

PROCEDURAL SAFEGUARDS

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| <i>You will be informed of your rights under state and federal special education law</i> |
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A copy of the procedural safeguards will be provided to you one time each year, typically at your child's IEP meeting. An additional copy will be given to you:

- Upon the initial referral or parental request for evaluation; or
- Upon the school district's receipt of your Notice of Revocation of Consent for special education; or
- Upon the school district's receipt of a federal or due process complaint filed on behalf of your child; or
- In accordance with discipline procedures that result in a removal that constitutes a change of placement for your child; or
- Upon your request.

The procedural safeguards notice must be written in your native language or other mode of communication, unless it is not feasible to do so, and written in an easily understandable manner. If your native language or other mode of communication is not a written language, the school must take steps to ensure that a) the notice is

translated to you orally or by other means in your native language or other mode of communication, b) that you understand the content of the notice, and c) that there is written evidence that these requirements have been met.

PRIOR NOTICE TO PARENTS

The school will notify you in writing if it is proposing to change or refusing to change your child's special education program. The notice must be easily understandable. You must also receive notice of special education meetings about your child within a reasonable time so that you can attend.

The school district must provide you with written notice each time it proposes to initiate or change, or refuses to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a FAPE to your child.

The notice must include:

1. a description of the action proposed or refused by the school district;
2. an explanation of why the school district proposes or refuses to take the action;
3. a description of any options the school district considered and the reasons why those options were accepted or rejected;
4. a description of each evaluation procedure, assessment, record or report that the school district used as a basis for the proposal or refusal;
5. a description of any other factors which are relevant to the school's proposal or refusal;
6. a statement that you, as a parent of a child with a disability, have protection under the procedural safeguards of special education law, and the means by which a copy of the procedural safeguards can be obtained, and
7. sources for you to contact to obtain assistance in understanding the procedural safeguards of special education.

The school district must provide you with prior written notice before it proposes to terminate services due to graduation with a regular diploma or due to exceeding the age of eligibility for services.

The school district must provide you with prior written notice before transferring rights regarding educational records when your child turns 18.

The school district must provide you with prior written notice after receiving written notice of your withdrawal of consent to special education and related services.

PARENT CONSENT

Your written permission is required before your child is initially evaluated, reevaluated, and receives special education services.

Information regarding your right to consent will be provided in your native language or other mode of communication. You should understand:

- The reason for which written consent is being asked (covers both action and records released and to whom);
- That giving your consent is voluntary;
- That you can revoke your consent at any time. (Withdrawn consent does not undo an action that has occurred after you gave your consent and before you withdrew it.)

The school must obtain your informed written consent before conducting an initial evaluation to determine eligibility for special education services or a reevaluation of your child.

In cases of evaluation and reevaluation, where the school district can demonstrate that it has taken reasonable measures to obtain your written permission and you fail to respond; the school district is not required to proceed but may do so as follows.

The school district may initiate procedures for a due process hearing to determine whether your child may be evaluated should you refuse to consent, or fail to respond to a request for consent to evaluate. Pending any administrative or judicial proceeding, your child would remain in his or her present education placement, unless you and the school district agree otherwise.

The school district shall seek to obtain informed consent from you before providing special education and related services to your child. Where parental consent is denied, the school district has no obligation to develop an IEP and is prevented from providing services.

You may withdraw your consent for the provision of special education and related services at any time, but your Notice of Revocation of Consent must be in writing.

INDEPENDENT EDUCATIONAL EVALUATION

If you disagree with the school's evaluation of your child, you can request an independent educational evaluation, conducted by someone not employed by your school district.

You may have the right to obtain an independent educational evaluation (IEE) of your child at public expense if you disagree with an evaluation obtained by your school district. An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district. Upon your request, the school district will provide information about where an IEE may be obtained as well as the school district's criteria and qualifications of the examiner. However, the school district may initiate a due process hearing to show that its evaluation is appropriate. If it is determined that the school district's evaluation is appropriate, or you seek and examiner that does not meet district criteria, you still have the right to an IEE, but not at public expense. If you obtain an IEE either at public or private expense, the results of that evaluation must be considered by the IEP team in any decision made with respect to the provision of a FAPE to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense.

EDUCATIONAL SURROGATE PARENTS

Some children do not have parents who can advocate for them in the special education process. An educational surrogate parent is someone appointed to represent the child at special education meetings.

Whenever the parents of a child are not known and/or the school district cannot, after reasonable efforts, locate the parents, or if parental rights have been terminated for that child, the school district will work with the Colorado Department of Education to have a trained educational surrogate appointed for the student.

The educational surrogate parent represents the child in all matters relating to the identification, evaluation, and educational placement of the child, including the provision of a free appropriate public education.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

When a student reaches 21, or becomes emancipated, certain special education rights transfer from the parent to the student.

Certain rights of parents under special education law transfer to the student when the student reaches the age of majority under state law (21 in Colorado), or earlier if the student is emancipated. These rights include, but are

not limited to: consent for evaluation or re-evaluation, decisions about services and placement, and rights to special education due process procedures.

STUDENT RECORDS

You have the right to see or request copies of your child's school records. If you disagree with the items in the records, you may ask if they can be changed or removed.

Access to Records

The Family Educational Rights and Privacy Act (FERPA) gives rights to parents regarding their child's education records. These rights transfer to a student or a former student who has reached age 18 or is attending an institution of post-secondary education.

Your school district must permit you to inspect and review your child's education records. The school district must comply with your request without unnecessary delay, and before any meeting regarding an IEP, or any hearing relating to your child. While federal law permits a longer period of time (not to exceed 45 days) to respond to a request for review, the Colorado Public Records Act sets forth a three-day time line which must be followed in most circumstances.

Your right to inspect and review education records under this section includes:

1. the right to a response from the school district to reasonable requests for explanations and interpretations of the records;
2. your right to have your representative inspect and review the records; and
3. your right to request that the school district provide copies of the records if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school district presumes that you have authority to inspect and review records relating to your child unless the school district has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school district must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the school district.

If you revoke consent for special education, the school district will not remove previous special education records from your child's educational file.

Fees for Searching, Retrieving and Copying Records

The school district may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Production by the school district of copies of education records may take more than the three days provided for their review and inspection.

Record of Access

The school district maintains a record of the parties who obtain access to education records collected, maintained, or used (except access by parents or parent representative and authorized employees of the school district), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the records.

Amendment of Records at Parent's Request

If you believe that information in the education records of your child is inaccurate or misleading or violates the privacy rights or other rights of your child, you may request that the school district amend the information.

The school district must decide whether to amend the information in accordance with your request within a reasonable period of time after receiving the request. If the school district refuses to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place a statement your child's records commenting on the disputed information or setting forth any reasons for disagreeing with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school. If the records of the child, or the contested portion are disclosed by the school district to any party, the statement must also be disclosed to the party.

Consent for disclosure of personal identification information.

Your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Your consent, or consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same administrative unit in which you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the administrative unit where the private school is located and officials in the administrative unit in which you reside.

DISCIPLINE

Before your child is suspended or expelled for a period longer than ten consecutive school days, the IEP Team, including the parent, must meet to determine whether the misconduct is a manifestation of your child's disability. If your child is suspended or expelled in excess of ten school days in the same year, the school must provide appropriate educational services beginning on the eleventh school day.

Discipline procedures relating to students with disabilities are extensive. Additional information can be obtained from your school administrator or IEP Team. Appropriate special education services must be made available to eligible children with disabilities who have been suspended or expelled (removed from their current educational placements) from the school for more than ten school days.

1. To the extent the school district takes action for students without disabilities, short term suspensions from the current placement may be imposed for discipline infractions for not more than 10 consecutive school days, for each infraction. Suspensions will be considered a "change of placement" if:
 - the removal is for more than 10 consecutive school days; or
 - the removals are a series of removals that are each less than 10 consecutive school days and constitute a pattern because the days of removal total more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time removed, similar types of behavior causing the removal; and the proximity of the removals to one another.
2. Disciplinary actions that constitute a change of placement will generally require the IEP Team, including the parent, to hold an IEP meeting. Within 10 days of the determination to change a special education student's

placement (except for a removal that is for 10 school days in a row or less), the parent, and relevant members of the IEP team (as determined by the parent and the district) must hold a manifestation meeting to review all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parents to determine: 1) If the conduct in question was caused by, or had a direct and substantial relationship, to the child's disability, **or** 2) If the conduct in question was the direct result of the administrative unit's (school district's) failure to implement the child's IEP.

If the result of the IEP team's decision is that your child's behavior was a manifestation of your child's disability, then your child may not be expelled. Your child will be returned to the placement from which your child was removed, unless you and the school district agree to a change of placement. Your child will receive, as appropriate, a functional behavioral assessment, a behavioral intervention plan and behavioral interventions and modifications that are designed to address the behavior so that it does not recur, or may have a current behavior intervention plan reviewed or modified.

4. If the result of the IEP team's review is that your child's behavior was not a manifestation of your child's disability, then your child may be disciplined in the same manner as a child without a disability would be disciplined, except that the school district must continue to provide appropriate educational services for your child while serving a suspension or expulsion that has resulted in a removal of longer than 10 days in the current placement
5. A child with a disability can be placed in an interim alternative setting (IAES) for up to 45 school days regardless of the outcome of the manifestation determination if the behavior in question falls under either of the following three special circumstances: 1) if the child brings a weapon to school or a school function, 2) is in possession of or using illegal drugs, and/or sells or solicits the sale of a controlled substance while at school or a school function, or 3) has inflicted serious bodily injury upon another person while on school premises or at a school function. The IAES in which a child is to be placed is determined by the IEP Team, including the parent. The child will receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation or have a current behavior plan reviewed and modified.
6. A hearing officer can order a change in placement to an IAES for up to 45 school days if it can be determined that the child is substantially likely to injure her/himself or others in his/her current placement.
7. School personnel may consider unique circumstances on a case by case basis when considering discipline for a student with disabilities.
8. If you disagree with the outcome of the manifestation determination or with a decision regarding placement, you may request a due process hearing.

RESOLVING DISAGREEMENTS ABOUT THE EDUCATION OF YOUR CHILD

Your child has a right to a free appropriate public education if she/he is eligible for special education. At times, you may disagree with the school district's identification, evaluation or proposed placement of your child or how it delivers services to your child. Attempts should be made to resolve these differences as soon as they arise. If you are not satisfied, you may do any of the following:

MEDIATION

On occasion, you might disagree with the special education testing, services or placement for your child. You can try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person, not employed by the school district, who assists you and the school in resolving differences. You may also request a due process hearing. Please have the school explain the processes before you make a final decision.

There might be times when you and the school district disagree on important issues regarding your child's education. If agreement cannot be reached, you and Denver Public Schools jointly have the right to request an impartial mediator to help reach a mutually agreeable solution. It is important for you to know that mediation is voluntary and is conducted by a qualified, impartial mediator at no cost to you. Mediation cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under special education law. Each session in the mediation process shall be scheduled in a timely manner and shall be held at a location that is convenient to the parties in the dispute. An agreement reached by the parties in the dispute in the mediation process shall be set forth in a legally binding written mediation agreement. Discussions during mediation are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins. If you elect not to use the mediation process, you may be asked to attend a meeting with a disinterested party, who would explain the benefits of the mediation process to you.

STATE COMPLAINT PROCEDURES

If you feel the school district/agency is violating special education requirements for your child, you can file a written complaint with the Colorado Department of Education to resolve the problem.

You have a right to file a written complaint with the Colorado Department of Education if you feel the school district or agency has violated a specific requirement of federal special education law or regulations. The complaint must be written, signed and filed with the Department explaining the alleged violations.

The complaint must include a statement that the school district has violated IDEA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date the complaint is filed. The Federal Complaints Officer will have 60 calendar days after the complaint is filed to:

1. give the school district or agency an opportunity to respond to the allegations;
2. give the parent an opportunity to submit additional information about the allegations;
3. carry out an impartial investigation including an on-site investigation, if the Federal Complaints Officer determines that an on-site investigation is necessary;
4. review all relevant information and make an independent determination of whether a violation of special education law has occurred;
5. issue a written decision to the school district or agency and the parents that addresses each allegation in the complaint and contains the findings of fact and conclusions and the reasons for the final decision.

The school district is obligated to implement the final decision.

The address for filing a Federal Complaint is:

Exceptional Student Leadership Unit
Federal Complaints Officer
Colorado Department of Education
201 East Colfax
Denver, CO 80203
303-866-6694

IMPARTIAL DUE PROCESS HEARING

If an agreement cannot be reached between you and the school district, you may request a due process hearing. The hearing will be conducted by an impartial hearing officer. As a parent involved in the hearing you must be given certain rights, including the right to an appeal.

You or the school district may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a FAPE. The complaint

must allege a violation that occurred not more than two years prior to the date the complaint knew or should have known about the allegation that forms the basis of the due process complaint is filed. This time limit does not apply if the school district misrepresented that the problem forming the basis of the complaint was resolved or information required to be provided to the parent was withheld.

Before a hearing is initiated, you or your attorney must provide a written complaint for due process to the school district involved, providing the following information:

1. name of your child;
2. address of residence of your child;
3. name of school your child is attending;
4. description of the problem(s), relating to the proposed or refused initiation or change, including related facts; and
5. a proposed resolution to the problem to the extent known and available to you at that time.

In the case of a homeless student, the complaint shall contain available contact information for the child and the name of the school the child is attending in addition to items 4 and 5 above.

The school district will have a form available for you to use to file the written complaint for due process. The written complaint shall be sent to the Director of Special Education of your school district.

The hearing will be arranged by your school district and conducted by an impartial hearing officer obtained through the Colorado Department of Education (CDE).

The hearing cannot be conducted by an employee of the state education agency or school district involved with the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

The school district must inform you of any free or low-cost legal or other relevant services available in the area if you request the information or if you or the school initiate a due process hearing.

Within fifteen days of receiving a request for due process from a parent, the school district must convene a resolution meeting between the parents and relevant IEP team members to provide an opportunity to resolve the issue, unless the parties agree in writing to waive the resolution meeting or agree to use the mediation process. Any agreement reached at the resolution meeting shall be in writing and will be legally binding. If the matter is not resolved within 30 days of the hearing request, the due process hearing may occur and the applicable timelines for a hearing shall commence.

At least five business days before a hearing, each party must disclose to other parties all evaluations completed by that date and recommendations based on the evaluations that party intends to introduce at the hearing. A hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing without consent from the other party.

The hearing officer shall decide the case on substantive grounds based on a determination of whether the student received a free appropriate public education, unless procedural inadequacies impeded the student's right to a free appropriate public education or significantly impeded the parents' opportunity to participate in the decision making process around the student's educational program or caused deprivation of educational benefit..

Due Process Hearing Rights

Any party to a hearing has the right to:

1. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. proceed without being represented by a licensed attorney;
3. present evidence and confront, cross-examine, and compel the attendance of witnesses;

4. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
5. obtain a written or electronic verbatim record of the hearing;
6. obtain a copy of written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the school district will transmit those findings and decision to the State advisory panel and make them available to the public.

As parents involved in the hearings, you must be given the right to have your child present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

A final hearing decision is reached and mailed to the parties within 45 days after completion of the thirty day resolution period unless the hearing officer grants a specific extension of time, beyond the time lines above, at the request of either party.

The decision made in a due process hearing is final unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described later in this document.

Administrative Appeal/Impartial Review

Any party aggrieved by the findings and decision in the hearing may appeal to CDE within thirty days of receiving the decision.

If there is an appeal, CDE shall initiate an impartial review of the hearing. The official conducting the review shall:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirement of due process;
3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review; and
6. Give a copy of written or electronic findings and the decision to the parties. (After deleting any personally identifiable information, the State educational agency will transmit those findings and decisions to the State advisory panel and make them available to the public.

Each review involving oral arguments must be conducted at a time and place which is reasonably convenient to you and your child.

CDE shall ensure that a final decision is reached in an administrative review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

Civil Action

Any party aggrieved by the findings and decision made in a hearing, who does not have the right to appeal, and any party aggrieved by the decision of a reviewing officer has the right to bring a civil action in State or Federal Court. The party bringing the action shall have 90 days from the date of the decision being appealed to bring a civil action.

Child's Status during Proceedings

Pending an expedited hearing or an appeal regarding disciplinary action to challenge an interim alternative educational setting or a manifestation determination, your child must remain in the interim alternative

educational setting or in the disciplinary placement until the hearing officer's decision or for the time period determined appropriate, whichever occurs first.

If school personnel maintain that it is dangerous for your child to be in the current placement, the school district may request an expedited due process hearing. The hearing officer may then place your child in an interim alternative educational setting for 45 school days if it is determined that the child is substantially likely to hurt himself or others.

During the pendency of all other administrative or judicial proceedings regarding a complaint, unless you and the school district agree otherwise, your child must remain in her or his present educational placement.

If the decision of an administrative law judge in an appeal agrees with the parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and you and the placement of the child will change according to the agreement.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

Award of Attorneys' Fees

In any action or proceedings discussed above, only a Court, in its discretion, may award reasonable attorneys' fees as part of the cost to the parents or guardians of a child with a disability who is the prevailing party. Therefore, hearing officers and complaint investigators may not award attorneys' fees.

Attorney fees may not be awarded for any meeting of the IEP Team (unless such a meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state) or for a mediation that is conducted prior to the filing of a complaint.

A school district may recover attorney's fees against a parent's attorney or a parent for certain frivolous unreasonable, groundless or harassing actions.

PRIVATE SCHOOL PLACEMENT

Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a FAPE .

If the parents of a child with a disability, who previously received special education and related services from the local school district, enroll their child in a private school without the consent of, or referral from the school district, a court or due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment if a court or hearing officer determines:

1. that the local school was not providing a FAPE, or
2. that the school district did not provide the child a FAPE in a timely manner, and
3. that the private placement is appropriate.

Reimbursement may be reduced or denied:

- If the parents or guardians, at the last IEP meeting that they attended, failed to tell the IEP Team that they were rejecting the placement proposal by the school district. The parents/guardians, in rejecting the proposed placement, must tell the IEP Team of their concerns and their intent to enroll their child in a private school at public expense; or
- If the parents/guardians failed to give the school district written notice, at least 10 business days before removing the child from school, of their decision to unilaterally enroll their child at a private school at public expense, or

- If, prior to removal from the public school, the school district gave the parents/guardians written notice of its intention to evaluate (including a statement of the purpose of the evaluation that was reasonable and appropriate) and the parents/guardians did not make the child available for evaluation, or
- If a judicial officer determines that the parent/guardian acted unreasonably.

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